

**§ 32.8 Program reporting requirements.**

Grantees shall submit the following reports to the Secretaries quarterly within 15 days after the end of December, March, June, and September. In addition, a final report is required within 60 days from the end of each grant period. Forms for completing the reports will be supplied to the grantee at time of grant award. The required reports are:

(a) Quarterly Financial and Program Progress Reports: (1) *Financial Status*. Grantees shall submit a quarterly accrual basis "Financial Status Report" and a final report.

(2) *Enrollee Characteristics and Program Progress*. Based on the payroll data system, Administrative Service Center (ASC) provides a quarterly summary of enrollee characteristics and program progress to Forest Service, Departments of the Interior, and Labor within 15 days of the end of the quarter. For States not using the ASC, the same data is required to be submitted to the ASC. All States shall submit the required final report.

(b) "YACC Work Accomplishment" (YACC Form 5): The purpose of this form is to provide program data such as enrollee man-years worked and quantity of work accomplished as expressed in normal units of measure. Instructions regarding this report will accompany the form.

(c) The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

**§ 32.9 Consideration and criteria for awarding grants.**

(a) The decision by the Secretaries' designated officials for award of YACC grants will consider the following:

(1) Amount of grant funds appropriated and available.

(2) The total youth population ages 16 to 23, inclusive, in each State in relation to the total for all States.

(3) The ability of State agencies to operate at the funding level provided in any given Federal fiscal year.

(4) The quality of each proposed project in terms of meeting program objectives as reflected in each applica-

tion. After the initial grant year, actual performance of the Grantee in administering the YACC program in prior years will be considered.

(5) The cost to the Federal Government of the State program in relation to the quality and quantity of projects proposed.

(6) The following imposed limitations: (i) National average cost per enrollee, (ii) Percent in residential program.

(7) The capability and past performance by Grantees in meeting their responsibilities as required by FMC 74-4 and OMB Circular A-102.

(8) Project Location Approval. Each project location will be approved by Forest Service and Interior through their Regional/Area Offices.

(b) The demonstrated capability of the Grantee to establish and implement an effective mechanism to assure equal employment opportunity in staff hiring by the Grantee or any subgrantees will be considered prior to award. If the Grantee's performance is found to be so unsatisfactory or inadequate as to warrant denial, suspension, modification or termination, then appropriate action will be taken in accordance with the regulations implementing title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

**PART 33—ALLOCATION OF DUTY-FREE WATCHES FROM THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA [NOTE]**

NOTE: Public Law 89-805 (19 U.S.C. 1202) authorizes the Secretary of the Interior and the Secretary of Commerce to issue joint regulations governing the allocation of duty-free quotas for watches and watch movements assembled in the Virgin Islands, Guam, and American Samoa. For the text of these joint regulations, see 15 CFR part 303, published at 42 FR 62907, Dec. 14, 1977, and revised at 49 FR 17740, Apr. 25, 1984.

**PART 34—REQUIREMENTS FOR EQUAL OPPORTUNITY DURING CONSTRUCTION AND OPERATION OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM**

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AUTHORITY: Sec. 17, Pub. L. 94-586, 15 U.S.C. 719 (1976).

SOURCE: 45 FR 31104, May 12, 1980, unless otherwise noted.

## § 34.1 Statement of purpose.

The purpose of these regulations is to implement both section 17 of the ANGTA and Condition 11 of the President's *Decision*.

## § 34.2 Applicability.

These regulations apply to all activities including, but not limited to, contracting for goods and services, employment, and any other benefits that flow from activities conducted under permits, rights-of-way, public land orders, and other Federal authorizations granted or issued pursuant to ANGTA, by recipients of those authorizations, their agents, contractors, and subcontractors, including labor unions or other persons.

## § 34.3 Definitions.

(a) As used in this part, the term, *ANGTA* means the Alaska Natural Gas Transportation Act of 1976, Public Law 94-586, 15 U.S.C. 719.

(b) *ANGTS* means the Alaska Natural Gas Transportation System as designated and described in the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, September 1977, pursuant to section 7(a) of ANGTA, S.J. Res. 82, 91 Stat. 1268 (1977).

(c) The term *affirmative action plan* means a statement of those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal opportunity in employment, procurement, and the provision of services, financial aid or other benefits, and includes goals for achieving equal opportunity and a description of specific result-oriented procedures to which the recipient, contractor or subcontractor commits itself

to apply a good faith effort in order to achieve the goals.

(d) The term *applicant* means a person who has applied for and is seeking Federal authorization under ANGTA to construct and operate the ANGTS, but has not received or been denied the authorization sought.

(e) The term *contract* means any agreement or arrangement (in which the parties do not stand in the relationship of employer and employee) between a recipient or an applicant and any person for the furnishing of supplies or services to a recipient or applicant, or for the use of real or personal property including lease arrangements by a recipient or applicant. The term contract also includes any agreement or arrangement, whether oral or written, express or implied, between two persons and which is related in any way to the activities conducted under any certificate, permit, right-of-way, lease or other Federal authorization granted or issued pursuant to ANGTA, or in any way connected with ANGTS.

(f) The term *contractor* means a person who is a party to a contract with a recipient or an applicant.

(g) The term *discrimination* means an action or a failure to act which has the effect or would tend to have the effect of excluding a person from participation, denying a person benefits, subjecting a person to unequal treatment, or harassing a person because of and on the basis of race, creed, color, national origin or sex.

(h) The term *Federal Inspector* means the official appointed by the President pursuant to section 7(a)(5) of ANGTA to coordinate governmental actions with respect to ANGTS, including the monitoring and enforcement of the terms and conditions attached to government authorizations issued under ANGTA. The term also includes authorized representatives of the Federal Inspector.

(i) The term *female business enterprise* (FBE) means a sole proprietorship, partnership, unincorporated association, joint venture or corporation that is owned and controlled by women. To qualify as an enterprise owned and controlled by women, 51% of the beneficial ownership interests and 51% of the voting interests must be held and actually

voted by women. Further, the enterprise must in fact be controlled and managed by women.

(j) The terms *minority* and *minority groups* include:

(1) Black, all persons having origins in any of the Black African racial groups not of Hispanic origin;

(2) Hispanic, all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race;

(3) Asian and Pacific Islander, all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands including persons having origin, for example, in China, India, Japan, Korea, the Philippine Islands, Samoa; and

(4) American Indian or Alaskan Native, all persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

(k) The term *minority business enterprise* (MBE) means a sole proprietorship, partnership, unincorporated association, joint venture or corporation that is owned and controlled by minorities. To qualify as an enterprise owned and controlled by minorities, 51% of the beneficial ownership interest and 51% of the voting interests must be held and actually voted by minority people. Further, the enterprise must in fact be controlled and managed by minority people.

(l) The term *person* includes recipients, contractors, subcontractors, governmental agencies, corporations, associations, firms, partnerships, joint stock companies, labor unions, employment agencies, and individuals.

(m) The term *President's Decision* means the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, September 1977, pursuant to section 7(a) of ANGTA, approved and adopted S.J. Res. 82, 91 Stat. 1268 (1977).

(n) The term *procurement* means the acquisition (and directly related matters) of personal property and nonpersonal services (including construction) by such means as purchasing, renting, leasing, (including real property) con-

tracting, or bartering, but not by condemnation or donation.

(o) The term *procurement practice* means any course of conduct or activity taken to effect procurement.

(p) The term *recipient* means any corporation association, joint stock company, partnership, firm, agency or individual who receives a certificate, permit, right-of-way, lease, or other Federal authorization granted or issued under ANGTA to construct and operate the ANGTS, whether directly or through another recipient including any successor, assignee or transferee thereof.

(q) The term *subcontract* means any agreement or arrangement between a contractor and any person, regardless of tier, (in which the parties do not stand in the relationship of employer and employee) in any way related to the performance of any one or more contracts as defined above.

(r) The term *vendor* means a person who sells or provides goods or services for the construction and operation of ANGTS. A vendor may be a contractor or subcontractor.

#### § 34.4 Discrimination prohibited.

(a) *General.* No person shall, on the grounds of race, creed, color, national origin, or sex, be discriminated against or excluded from receiving any benefit from or participating in any activity conducted under any certificates, permits, rights-of-way, leases, and other Federal authorizations to which this part applies.

(b) *Specific actions in which discrimination is prohibited.* No person shall directly or through contractual or other arrangements, discriminate in any activity to which this part applies, including the following:

(1)(i) Employment policies and practices of employers, including advertising, hiring or firing, up-grading, promotion, or demotion, transfer, layoff, or termination, rates of pay, and other forms of compensation or benefits, or other terms and conditions of employment;

(ii) Employment policies and practices of labor unions, including, acceptance of applications for membership,

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enrolling or expelling members, classification of members, referrals for employment, training and apprenticeship programs, and the provision of other benefits of membership;

(iii) Employment policies and practices of employment agencies including acceptance of applications for employment services, referrals for employment, classification of individuals for employment, and the provision of other benefits and services.

(2) Procurement practices, including manner of procurement, qualification for contracting or placement on procurement source lists, the composition of sources solicited, the use of pre-bid conferences, solicitation for proposals or bids, the designation of quantities, delivery schedules or other specifications, selection procedures, or performance standards.

(3) The provision of services, financial aid and other benefits provided in whole or in part, under any Federal authorization to which this part applies, more specifically including actions that result in the:

(i) Denial to an individual or establishment of any service, financial aid, or other benefits;

(ii) Provision of any service, financial aid, or other benefit to an individual, or establishment which is different, or is provided in a different manner, from that provided to others;

(iii) Subjection of an individual to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefits;

(iv) Restriction of an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit;

(v) Treatment of an individual that is different from others in the determination of any admission, enrollment, eligibility, membership requirements or other conditions which individuals must meet in order to be provided any service, financial aid, or other benefit;

(vi) Denial to an individual of an opportunity to participate in any activity that is different from that afforded others;

(vii) Denial to an individual of the opportunity to participate as a member

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of any planning or advisory body that participates in the provision of any service, financial aid, or other benefit;

(viii) Use of criteria or methods of administration which have the effect of subjecting individuals or establishments to discrimination in the determination of the types of services, financial aid, or other benefits, or the facilities that will be provided; or the class of individuals or establishments to which, or the situation in which, such services, financial aids, other benefits, or facilities will be provided; or the class of individuals or establishments to be provided an opportunity to participate in any activity; and

(ix) Selection of a site or location for facilities for the provision of services, financial aid, or other benefits, with the purpose or effect of substantially impairing the objectives of section 17, the President's *Decision*, and implementing rules, regulations, and orders.

(c) *Scope of prohibited discrimination.*

(1) The enumeration of specific forms of prohibited discrimination in paragraph (b) of this section does not limit the general prohibition in paragraph (b) of this section.

(2) Action taken in compliance with an affirmative action plan developed pursuant to these regulations shall not be deemed a violation of this section.

### § 34.5 Assurances.

Every application for a certificate, permit, right-of-way, lease, public land order, or other Federal authorization to which this part applies, filed after the effective date of these regulations, and every contract covered hereunder to provide goods, services, or facilities in the amount of \$10,000 or more to a recipient, contractor, or subcontractor to which this Part applies, must contain an assurance that the recipient, contractor, or subcontractor does not and will not maintain any segregated facilities, and that all requirements imposed by or pursuant to section 17, Condition 11 of the President's *Decision* and implementing rules, regulations, and orders shall be met, and that it will require a similar assurance in every subcontract of \$10,000 or more.

**§ 34.6 Equal opportunity clause.**

Each certificate, permit, right-of-way, lease, or other Federal authorization to which this part applies, shall include the following Equal Opportunity Clause:

(a) The recipient, contractor, or subcontractor hereby agrees that it will not discriminate directly or indirectly against any individual or establishment in offering or providing procurements, employment, services, financial aid, other benefits, or other activities to which these regulations apply. The recipient, contractor, or subcontractor will take affirmative action to utilize business enterprises owned and controlled by minorities and/or women in its procurement practices; to assure that applicants for employment are employed, and that employees are treated during employment, without discrimination on the basis of race, creed, color, national origin, or sex; and to assure that individuals and establishments are offered and provided services, financial aid, and other benefits without discrimination on the basis of race, creed, color, national origin, or sex. The recipient, contractor, or subcontractor agrees to post in conspicuous places available to contractors, subcontractors, employees, and other interested individuals, notices which set forth these equal opportunity terms; and to notify interested individuals, such as bidders, contractors, purchasers, and labor unions or representatives of workers with whom it has collective bargaining agreements, of its obligations under section 17, Condition 11 of the President's *Decision*, and the implementing rules, regulations, and orders thereunder;

(b) The recipient, contractor, or subcontractor will comply with all rules, regulations, and orders which implement section 17 and Condition 11 of the President's *Decision*;

(c) The recipient, contractor, or subcontractor will furnish all information and reports required by or pursuant to rules, regulations, and orders implementing section 17 and Condition 11 of the President's *Decision*, and will permit access to its facilities, books, records, and accounts by the Federal Inspector for purposes of ascertaining

compliance with such rules, regulations, and orders;

(d) In the event of a recipient's, contractor's, or subcontractor's non-compliance with these equal opportunity terms, compliance may be effected through procedures authorized by ANGTA and set forth in implementing rules, regulations, and orders, or by any other means authorized by law;

(e) The recipient, contractor, or subcontractor will include the provisions of paragraphs (a) to (e) of this section in all agreements to assign authorizations, all contracts over \$10,000, and all contracts of indefinite quantity, unless there is reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The recipient, contractor, or subcontractor will take such action with respect to any contract or purchase order that the Federal Inspector may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the recipient, contractor, or subcontractor becomes involved in or is threatened with litigation with a subcontractor or vendor, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(f) Any project labor agreement which may be entered into between the applicants and any union must be consistent with the provisions of these regulations and must contain an Equal Opportunity Clause.

**§ 34.7 Incorporation by operation of law.**

(a) The Equal Opportunity Clause shall be deemed incorporated into every Federal authorization, agreement to assign an authorization, contract and subcontract where § 34.6(e) of these regulations requires the inclusion of such a clause whether or not the clause is physically incorporated in such Federal authorization, agreement to assign authorization, contract or subcontract, and whether or not the agreement or contract is written.

(b) The affirmative action plans prepared pursuant to this part shall be deemed incorporated into the Federal

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authorizations, contracts, and subcontracts to which these regulations apply.

### § 34.8 Affirmative action plans.

(a)(1) Within one hundred and twenty (120) days after the effective date of this part, applicants or recipients shall have an acceptable affirmative action plan which has been approved by the Federal Inspector pursuant to paragraph (d) of this section and which conforms to the requirements of paragraph (c) of this section. The affirmative action plan must set forth overall goals and timetables for the employment of minorities and women and the utilization of MBE's and FBE's in the construction and operation of the applicant's or recipient's segment of the Alaska Natural Gas Transportation System. The approved goals and timetables shall be published in accordance with paragraph (d)(4) of this section and included in contract bid specifications in accordance with paragraph (b)(1) of this section.

(2) Each contractor and subcontractor with fifty (50) or more employees and with a contract of \$1,000,000 or more that is in effect on the effective date of this part shall, within one hundred and fifty (150) days after the effective date of this part, submit an affirmative action plan to the Federal Inspector for approval pursuant to paragraph (d) of this section. All contractors and subcontractors, with fifty (50) or more employees, which are awarded contracts for \$1,000,000 or more after the effective date of this part shall submit an affirmative action plan to the Federal Inspector pursuant to paragraph (d) of this section at the time the contract is awarded or 150 days after the effective date of this part, whichever is later.

(b)(1) In addition, recipients and each of their contractors and subcontractors shall require, as one of the specifications for all bids for contracts in the amount of \$50,000 or more, that all bidders which have, or would have if awarded the contract, a workforce of 50 or more employees, must develop a written affirmative action plan consistent with paragraphs (c) (1) and (2) of this section prior to bidding, unless an exemption under paragraph (d)(5) of

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this section has been obtained by the bidder. Such a plan must apply to each of the bidder's facilities which are associated with any activities conducted pursuant to Federal authorizations to which this part applies. A summary of such plan should be included with the bid submitted to the contractor or subcontractor. The ability of the bidder to comply with these regulations shall be a factor considered in evaluating the bid. The plan must be included in the contract which is executed between the contractor or subcontractor and the bidder subject to whatever revision may be required by the Federal Inspector.

(2) The requirements of paragraph (b)(1) of this section also apply to any bidder which has previously been awarded a contract or contracts where the total amount of such contract or contracts taken together with the amount of the contract upon which the bid is to be made total \$50,000 or more and the bidder has a workforce of 50 or more employees.

(3) All bidders for contracts of \$150,000 or more must develop a written affirmative action plan under paragraph (c)(3) of this section regarding procurement and contracting practices. All such plans developed under paragraph (c)(3) of this section must be submitted to the Federal Inspector for approval at the time the contract is awarded.

(c) An acceptable affirmative action plan must include an analysis of all areas of operation of the recipient, contractor, or subcontractor in which it could be deficient in offering services, opportunities, or benefits to minority groups and women, all areas of employment in which it could be deficient in the utilization of minority groups and women, and all areas of procurement in which it could be deficient in the utilization of MBE's and FBE's; and, further, the plan must include specific goals and specific timetables to which the recipient, contractor, or subcontractor will direct its best efforts and undertake specific action to correct all deficiencies, and to materially increase the participation of minorities and women in all aspects of its operation. Such plans shall be updated annually.

In addition, the affirmative action plan shall include the following:

(1) *Services, financial aid, and other benefits.* The recipient, contractor, or subcontractor is required to specifically address and analyze all areas of its operation in which services, financial aid, and other benefits are offered or provided at each of its facilities to which this part applies. The analysis should include:

(i) An identification of services, financial aid, and other benefits that the recipient, contractor or subcontractor provides or may provide;

(ii) A description of the population eligible to be served or to participate, by race, color, national origin, and sex;

(iii) An identification of specific actions that will be taken to assure that no discrimination occurs in providing services, financial aid, and other benefits;

(iv) If relevant, the location of all existing or proposed facilities connected with the services, financial aid, or other benefits, as well as related information adequate for determining whether the location has or could have the effect of denying access to any individual on the basis of prohibited discrimination;

(v) Where relocation of facilities is involved, the steps that will be taken to guard against adverse socioeconomic effects on individuals on the basis of race, color, creed, national origin, or sex;

(vi) Information on all areas of the recipient's, contractor's, or subcontractor's operations that require change to assure that specific actions prohibited in paragraph (b)(3) of this section do not occur in the provision of any of its services, financial aid, or benefits;

(vii) A monitoring system to assure that no discrimination occurs.

(2) *Employment practices.* (i) The affirmative action plan shall address all aspects of employment in construction and non-construction operations and shall contain the analysis and commitments which are required in regulations promulgated by the Department of Labor pursuant to Executive Order 11246, specifically, those at 41 CFR 60-4.3(a)(7), (13), and (14) for the employment of construction employees, and

those at 41 CFR 60-2.21, 60-2.22, 60-2.24, 60-2.26 for the employment of non-construction employees.

(ii)(A) The affirmative action plan of the applicants or recipients shall contain goals and timetables applicable to each segment of the ANGTS, employing the method of analysis set forth at 41 CFR 60-2.11(b). In developing goals the standards set out at 41 CFR 60-2.12(a)-(j) should be followed as well as the specific guidelines set forth below:

(1) Current national statistics, such as those available from the U.S. Bureau of the Census, should be used to determine the available minority and female workforce populations unless it can be shown that a particular part of the project can be reasonably expected to draw labor only from a small area. If such a showing is made then statistics from such smaller area shall be employed in setting goals for that part of the project.

(2) Goals should be set separately for each minority group, as set out in paragraph (j) of this section, and for women, by each job group.

(3) Goals should be set in proportion to the group's general availability in the population taking into consideration

(i) The number of group members currently available in that job group,

(ii) The reason members of the group are not available in that job group in proportion to their existence in the general population, and

(iii) The degree to which the provision of training could be expected to increase the availability of the group's members in the particular job group within the time available.

(B) The affirmative action plan of each contractor and subcontractor shall contain goals and timetables based upon the overall goals and timetables set by the applicant or recipient for the segment of the ANGTS upon which the contractor or subcontractor will work.

(iii) It shall not be a violation of this part for a recipient, contractor or subcontractor to extend a preference in employment consistent with 41 CFR 60-2.12(j). For the purpose of this section the term "reservation" in Alaska shall

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be the same as in 25 CFR 80.1, 91.1, and 93.1.<sup>1</sup>

(3) *Procurement and contracting practices.* (i) Applicants or recipients and each of their contractors and subcontractors with contracts of \$150,000 or more shall develop for the Federal Inspector's approval an affirmative action plan that identifies specific actions which the applicant or recipient, contractor or subcontractor, will take to afford MBE's and FBE's the maximum practicable opportunity to participate in the construction and operation of ANGTS.

(ii) The affirmative action plan of the applicant or recipient shall contain specific dollar goals set separately for MBE's and FBE's, and timetables for achieving these goals. The applicant's or recipient's goals and timetables shall be applicable to all procurement and contracting on its respective segment of the ANGTS. In setting goals the following factors should be considered:

(A) The availability and capability of existing MBE's and FBE's in each procurement and contracting area;

(B) The anticipated levels of procurement and contracting activities;

(C) The extent to which procurement and contracting procedures can be amended to utilize contract breakouts and other methods, as described in paragraph (c)(3)(iii)(D)(2) of this section, to increase opportunities for MBE's and FBE's;

(D) The extent to which new firms can be organized and the capability of existing firms expanded either through the efforts of the applicant or recipient and its contractors and subcontractors or through the efforts of government or other organizations and institutions.

(iii) Affirmative action plans developed and submitted pursuant to paragraph (c)(3)(i) of this section shall contain the following elements:

(A) An in-depth analysis of all areas of procurement and contracting procedures to determine if these procedures offer maximum opportunity for the utilization of MBE's and FBE's. All deficiencies must be identified along with

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steps that will be taken to correct them.

(B) A description of all contracting opportunities to be offered in the succeeding year, or for such longer period of time for which projections are available. The plan shall identify the types of services and supplies for which contracts are to be let, with as much specificity as possible, indicating the anticipated dollar amounts of such contracts.

(C) Specific dollar goals for MBE's and FBE's and timetables for achieving such goals based upon the overall goals and timetables set by the applicant or recipient for the segment of ANGTS upon which the contractor or subcontractor will work.

(D) A description of all actions that will be taken to provide the maximum practicable opportunity for MBE's and FBE's to participate in the construction and operation of the ANGTS including the following:

(1) The appointment of a liaison officer who will administer the MBE and FBE program, the identification of that officer, and a description of the officer's duties and authority;

(2) Identification of steps that will be taken to insure timely and full consideration of MBE's and FBE's in all procurement and contracting decisions, and the identification of how those procedures will be implemented. This shall include procedures relevant to (i) the arrangement of solicitations, (ii) time for preparation of bids, (iii) quantity requirements, (iv) determination of specifications, (v) determination of delivery schedules, (vi) the determination of the manner of contracting, and (vii) breaking out contracts into smaller subcontracts;

(3) An identification of contracting arrangements that will be adopted to increase the use of MBE's and FBE's, including analysis of the circumstances in which and the extent to which the following types of contracting practices can be used: (i) Noncompetitive contracting, (ii) contracting based upon competition between a limited number of enterprises, and (iii) negotiated contracts;

(4) Specific procedures for identifying capable MBE's and FBE's and for the

<sup>1</sup>EDITORIAL NOTE: In the March 30, 1982, FEDERAL REGISTER, these sections were redesignated as 25 CFR 286.1, 101.1, and 103.1, respectively.



dissemination of information on business opportunities and procurement practices to minority and women's business organizations and associations, in sufficient detail, and affording sufficient time, to offer full opportunities for participation by MBE's and FBE's;

(5) An identification of financial assistance, such as investment in Minority Enterprise Small Business Investment Companies (MESBIC) and direct investment in MBE's and FBE's, that the recipient, contractor, or subcontractor determines to be feasible and financially appropriate to offer MBE's and FBE's;

(6) The identification and elimination of non-essential technical requirements and procedures, including non-essential bonding and insurance requirements;

(7) Holding regularly scheduled meetings with procurement and contracting officials of the recipient, contractor, or subcontractor to explain MBE and FBE policies and procedures;

(8) Identification of specific procedures for certifying and verifying ownership and control of companies identified as MBE's and FBE's. The plan shall include the requirements that firms submit affidavits as to their status as MBE's and FBE's as defined in § 34.3.

(E) As an integral part of the affirmative action plan, develop and maintain separate source listings of MBE's and FBE's. Such lists or files should contain whenever possible the following information on each company:

(1) A description of each business, including the type of organization,

(2) The product or service offered,

(3) Information on ownership and control,

(4) All relevant data and affidavits which establish that the enterprise is in fact owned, controlled, and managed by minorities and/or women.

(4) *Complaint system for affirmative action plans.* (i) The affirmative action plan must include a grievance mechanism for resolving disputes arising from the implementation of the plan.

(ii) A copy of all complaints, related records, and specific resolutions must be maintained.

(5) *Data to support affirmative action plans and access to plans.* (i) Data supporting the analyses and plans required by these regulations shall be compiled and maintained as part of the affirmative action plan.

(ii) Copies of the affirmative action plan and supporting data shall be made available to the Federal Inspector upon his request as may be appropriate for the fulfillment of the Inspector's responsibilities under these regulations.

(d) *Review of affirmative action plan.*

(1) Applicants and their contractors and subcontractors which are required by paragraphs (a) and (b) of this section to submit affirmative action plans to the Federal Inspector for approval shall provide the Federal Inspector with the following information at the time the affirmative action plan is submitted:

(i) A brief description of pending applications to any Federal agency for Federal financial assistance or the award of a government contract, as well as any Federal assistance being received, or any government contracts or subcontracts being performed;

(ii) Whether the applicant, contractor, or subcontractor has been the subject of a compliance review conducted by the Department of Labor pursuant to 41 CFR part 60-1 within the preceding twelve months;

(iii) Whether any Federal, State or local government agency has found the applicant, contractor, or subcontractor in non-compliance or has found reasonable cause to believe the applicant, contractor, or subcontractor is in violation of, or in non-compliance with, any civil rights requirements;

(iv) A description of the methods by which the applicant, contractor, or subcontractor will insure that its contractors and subcontractors comply with the provisions of the affirmative action plans during the term of the contracts;

(2) The Federal Inspector shall consider conducting an on-site review before the award of any Federal authorizations, agreements to assign Federal authorizations, contracts or subcontracts under which substantial employment or procurement opportunities will be offered;

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(3) The Federal Inspector will determine whether the affirmative action plans are adequate. If deficiencies are found to exist in a plan, the recipient, contractor, or subcontractor shall correct the deficiencies in consultation with the Federal Inspector. If deficiencies are not corrected to the satisfaction of the Federal Inspector, the Inspector may enforce compliance with this section through measures authorized by ANGTA or any other provision of law.

(4) Upon approval of the affirmative action plan—including the goals and timetables—of the applicants or recipients, the Federal Inspector shall publicize the goals and timetables which are approved for each segment. Notice should be sent to all parties who submitted comments to the Department of the Interior in response to the Notice of Proposed Rulemaking issued about these regulations on October 12, 1979 (44 FR 59096).

(5) The Federal Inspector may, upon request, grant exemptions from the requirements of paragraph (b) of this section to any bidder which can demonstrate that no significant employment opportunities will result from an award of a contract to the bidder.

### § 34.9 Compliance reporting.

(a) *Records, reports, and access to books.* Each recipient, contractor, or subcontractor to which these regulations apply shall submit to the Federal Inspector reports in the form and manner that the Federal Inspector determines to be necessary to insure compliance with the rules, regulations, and orders implementing section 17 and Condition 11 of the President's *Decision*.

(b) *Access to sources of information.* Each person to whom this part applies shall permit access by the Federal Inspector during normal business hours to books, records, accounts, and other sources of information, and to facilities, as the Federal Inspector determines to be necessary to insure compliance with the rules, regulations, and orders implementing section 17 and the President's *Decision*.

(c) *Failure to submit reports.* Failure to file timely, complete, and accurate reports, or failure to permit access to

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sources of information as required constitutes non-compliance with the Equal Opportunity Clause and with these regulations and, therefore, constitutes grounds for action by the Federal Inspector, recipient, contractor, or subcontractor to enforce compliance or levy sanctions as authorized by ANGTA, by the implementing rules, regulations, and orders thereunder, by contractual agreement, or by any other means authorized by law.

(d) *Information for beneficiaries and participants.* Each recipient or other entity required to develop an affirmative action plan pursuant to these regulations shall make the plan available for inspection by employees, participants, beneficiaries, local, State, and Federal government officials, and members of the public upon request. A copy of the plan shall be maintained at each place of employment, and a notice posted at each such place to advise employees and members of the public that the plan is available for inspection upon request.

### § 34.10 Compliance reviews.

(a) *Periodic compliance procedures.* (1) The Federal Inspector will review the practices of recipients, contractors, or subcontractors, which offer significant opportunities for employment or procurement, to determine whether such recipient, contractor, or subcontractor are complying with its affirmative action plans and the rules, regulations, and orders implementing section 17 and Condition 11 of the President's *Decision*. The review will consist of a comprehensive analysis of all aspects of the recipient's, contractor's, or subcontractor's operations and practices and the conditions resulting therefrom. The review will include an on-site visit if the Federal Inspector determines that such a review is necessary.

(2) The Federal Inspector will continually monitor and verify the status of MBE's and FBE's through procedures as the Inspector may determine appropriate.

(b) *Complaints.* (1) Complaints alleging discrimination or non-compliance with affirmative action plans shall be filed with the Federal Inspector.

(2) A complaint must be filed within 180 days from the date of the alleged

discrimination, unless the time for filing is extended by the Federal Inspector for good cause shown.

(3) The complaint should include the name, address, and telephone number of the complainant; the name and address of the person alleged to have discriminated; a description of the alleged discriminatory acts; and any other pertinent information which will assist the investigation and resolution of the complaint. The complaint should be signed by the complainant or his or her authorized representative.

(4) The filing of a complaint with the Federal Inspector shall not constitute the filing of a complaint pursuant to title VII of the Civil Rights Act of 1964 with the Equal Opportunity Commission unless, by agreement between the two agencies, the Federal Inspector and the Equal Employment Opportunity Commission so provide.

(c) *Investigations.* The Federal Inspector will make a prompt investigation whenever information indicates that a person may have failed to comply with section 17 or Condition 11 of the President's *Decision* or the implementing rules, regulations, or orders thereunder. The investigation should include, where appropriate, a review of the pertinent practices and policies of the person under investigation, the circumstances under which the possible noncompliance occurred, and other factors relevant to determine whether the person has failed to comply with section 17, Condition 11 of the President's *Decision*, or the implementing rules, regulations, and orders thereunder.

(d) *Resolution of complaints and investigations.* (1) In exercising the broad authority to enforce these regulations, the Federal Inspector shall, within 90 days of the effective date of these regulations, establish the procedures to be followed in enforcing these regulations. These regulations shall thereafter be amended to incorporate these procedures. The procedures shall, to the extent consistent with ANGTA, be similar to those proposed to be adopted by the Department of Energy to resolve complaints of violations of title VI of the Civil Rights Act of 1964. See regulations proposed to be codified at 10 CFR 1040.104, (Nov. 16, 1978). At a minimum the procedures must incorporate the

following paragraphs (d) (2) through (5) of this section.

(2) The Federal Inspector will initiate action upon all complaints within 35 days of the date the complaint is filed with the Federal Inspector.

(3) If an investigation pursuant to paragraphs (a) through (c) of this section indicates probable non-compliance with section 17, Condition 11 of the President's *Decision*, or the implementing rules, regulations, or orders thereunder, the Federal Inspector will attempt to resolve the matter by informal methods of conference, conciliation, and persuasion.

(4) Resolution shall be effected through a written agreement between the Federal Inspector, the complainant, if any, and the person who has failed to comply. The agreement shall contain commitments to promptly eliminate all discriminatory conditions, shall identify the precise remedial actions to be taken and dates for completion of remedial actions, and shall include a provision that breach of the agreement may result in further enforcement actions by the Federal Inspector. The Federal Inspector will then certify compliance, on condition that the commitments are kept. Such certification will not preclude a subsequent determination by the Federal Inspector that the full facts were not known at the time agreement was executed, or the commitments undertaken are not sufficient to correct deficiencies.

(5) If the Federal Inspector's investigation does not warrant enforcement action, the Federal Inspector shall so inform the complainant, if any, and the person who was investigated. The complainant shall also be notified of any action taken including the achievement of voluntary compliance.

(6) Between the period of these effective dates of these regulations and the effective date of the enforcement procedures established by the Federal Inspector, pursuant to paragraph (d)(1) of this section, the Federal Inspector shall at a minimum adhere to paragraphs (d)(2) through (5) of this section.

(e) *Acts of intimidation or retaliation prohibited.* No person shall intimidate, threaten, coerce, harass, or retaliate against any individual for the purpose

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of interfering with any right or privilege secured by section 17, Condition 11 the President's *Decision*, and implementing rules, regulations, orders, because such individual has opposed a practice prohibited by section 17 or by this part, made a complaint, testified, assisted in, benefited from, or participated in any manner in an investigation, compliance review, proceeding or hearing, conducted pursuant to these regulations. The identity of complainants may be kept confidential except to the extent necessary to carry out the purpose of this part, including investigatory actions, hearings, or judicial proceedings.

### § 34.11 Enforcement sanctions.

The provisions of section 17, the President's *Decision*, and implementing rules, regulations, and orders, as appropriate, will be enforced through:

(a) The issuance of a compliance order by the Federal Inspector pursuant to section 11 of ANGTA; or

(b) The commencement of a civil action for appropriate relief, including a permanent or temporary injunction, or a civil penalty not to exceed \$25,000 per day; or

(c) By any other means authorized by law.

## PART 35—ADMINISTRATIVE REMEDIES FOR FRAUDULENT CLAIMS AND STATEMENTS

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AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 3801–3812.

SOURCE: 53 FR 4160, Feb. 12, 1988, unless otherwise noted.

### § 35.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Public Law 99–509, sections 6101–6104, 100 Stat. 1874 (Oct. 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.